



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 12, 2024

By ECF

The Honorable Kenneth M. Karas
United States District Judge
The Hon. Charles L. Brieant Jr.
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Re: *Daniel Libit v. United States Military Academy et al.*, No. 23 Civ. 00845 (KMK)

Dear Judge Karas:

This Office represents the United States Military Academy (the “USMA” or the “Government”) in this action brought by Plaintiff Daniel Libit (“Plaintiff”) under the Freedom of Information Act (“FOIA”). This case concerns FOIA requests submitted by Plaintiff to USMA and the Army West Point Athletic Association (“AWPAA”) seeking records concerning USMA’s intercollegiate athletics programs.

Since the parties’ last status update of November 14, 2023, USMA made a further production of non-exempt records responsive to Mr. Libit’s FOIA requests on January 5, 2024. The records in that production were previously withheld in full, but were reprocessed and released in part on January 5, 2024. The parties are in the process of conferring about USMA’s withholdings in the January 5, 2024, production in an effort to narrow or eliminate the issues in dispute. With regard to Mr. Libit’s October 7, 2022 FOIA request (as further narrowed on November 21, 2022) that seeks certain emails of General Darryl A. Williams from an “army.mil” email account, USMA conducted additional searches and recently identified potentially responsive records; USMA is actively reviewing those records now. USMA expects to process any responsive records within the next 30 days.

AWPAA also produced an additional round of responsive, non-exempt records to Plaintiff pursuant to this action, on December 13, 2023. This second production contains redacted contracts with third parties as well as the current agreement between AWPAA and USMA that was previously shared through USMA’s initial production on August 13, 2023 but was also requested from AWPAA. All non-exempt records responsive to Plaintiff’s request for emails sent by Wen-Kang Chang containing the terms “FOIA”, “FOIL”, “Freedom of Information Act” and “non-Federal entity” within the applicable time period were also included in the December 13, 2023 production. The parties will meet and confer concerning any redactions made to AWPAA’s production as well as documents that were withheld on account of one or more asserted privileges.

AWPAA is conducting searches and identifying potentially responsive records for production regarding Plaintiff’s request for agreements signed by or behalf of AWPAA or any of

its employees, board members, or officers, since Jan. 1, 2021, specifically agreements with any television or radio partners for football; any licensing, marketing, and sponsorship agreement; contracts for facility enhancements and capital projects in excess of \$100,000 including the \$95 million Michie Stadium Preservation Project, the athletic department's current apparel contract (inclusive of addenda and exhibits); football team-specific consulting contracts; athletic department consulting contracts (feasibility studies, strategic planning, operations review, Title IX assessment); or media relations or crisis communication contracts.

* * * * *

The parties thank the Court for its consideration of this joint status report and propose to file their next joint status report within 60 days, or by March 15, 2024.

Respectfully,

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